

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0304  
Sales and Use Tax  
For the Years 2000-2002**

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**ISSUES**

**I. Sales and Use Tax- Imposition**

**Authority:** IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-4-10, IC 6-2.5-5-8, IC 6-2.5-8-8, 45 IAC 2.2-8-12.

The taxpayer protests the imposition of sales tax.

**II. Tax Administration- Ten Percent (10%) Negligence Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

The taxpayer is a corporation renting linens to businesses such as caterers, country clubs, and restaurants. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales tax, interest, and penalty for the tax period 2000-2002. The taxpayer protested the assessment of sales tax on its leases of linens. The taxpayer contended that its leases qualified for exemption because its customers re-leased the linens to their customers. A telephone hearing was held and this Letter of Findings results.

**I. Sales and Use Tax-Imposition**

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC 6-8.1-5-1 (b).

Indiana imposes a sales tax on retail sales of tangible personal property in Indiana. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state unless the sale qualifies for a statutory exemption. IC 6-2.5-2-1. The

rental of tangible personal property is defined as a retail sale subject to the Indiana sales tax. IC 6-2.5-4-10. Sales and leases of tangible personal property to another for the purpose of selling or leasing the property in the ordinary course of business is exempt from the Indiana sales tax. IC 6-2.5-5-8.

IC 6-2.5-8-8 provides for exemption certificates from sales tax in pertinent part as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

45 IAC 2.2-8-12 clarifies the law concerning exemption certificates in pertinent part as follows:

(d) Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. . . .

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. Without a valid exemption certificate, the burden shifts back to the merchant to prove that the sales were not actually subject to sales tax. The taxpayer provided valid exemption certificates for several of the leases on which the department assessed sales tax. The taxpayer had no duty to collect and remit sales tax on these leases.

The taxpayer had two customers who did not provide valid exemption certificates. Therefore, the taxpayer has the burden of proving that the leases to these customers were exempt from the sales tax. To establish that these leases were exempt from the sales tax, the taxpayer presented letters indicating that the customers paid use tax on the use of the linens so no sales tax would be due on the transfer. These letters are not adequate to sustain the taxpayer's burden of proving that the leases were actually exempt from sales tax.

### **FINDING**

The taxpayer's protest to the sales tax assessed on leases to customers who provided valid exemption certificates is sustained. The remainder of the protest is denied.

**I. Tax Administration- Ten Percent (10%) Negligence Penalty**

**DISCUSSION**

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer ignored the law and department's instructions for registration with the department and the collection and remittance of Indiana sales taxes. These breaches of the taxpayer's duty constitute negligence.

**FINDING**

The taxpayer's protest is denied.